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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PUBLIC RESOURCE.ORG, JUSTIA INC.,

CASE NO.

Plaintiffs,
v.

COMPLAINT FOR DECLARATORY RELIEF RE NON-INFRINGEMENT OF COPYRIGHT

STATE OF OREGON LEGISLATIVE
COUNSEL COMMITTEE.

Defendant.

1. This is a civil action seeking declaratory relief. Defendant the Legislative Counsel Committee of the State of Oregon (hereafter “the Committee”) – in contrast to the vast majority of states – has taken the position that it is the copyright owner of the Oregon Revised Statutes and thus has a copyright interest in basic information about that state’s laws. The Committee claims that such basic information as the arrangement and subject-matter compilation of the Oregon Revised Statutes, headlines and numbering for each section, and tables and indexes can be copyrighted. Plaintiffs – whose mission is to make the law widely available to people who are expected to comply with it – take issue with the state’s broad assertion of rights over such basic information, and contend that the state cannot acquire copyright over the laws in the first instance. This declaratory relief action seeks to resolve that dispute.

PARTIES

2. Plaintiff Public.Resource.Org is a 501(c)(3) non-profit corporation headquartered in Sebastopol, California, which makes the text of laws available to the public over the Internet.

3. Plaintiff Justia, Inc. is a corporation headquartered in Mountain View, California which likewise makes available laws to the public over the Internet and otherwise.

4. Defendant the Legislative Counsel Committee of the State of Oregon, which is counsel to the Legislature of the State of Oregon, headquartered in Salem, Oregon, has claimed that it is the copyright owner of the Oregon Revised Statutes. The Committee is a financially self-sufficient agency which generates its own revenue and pays its own debts. This action does not seek an affirmative financial judgment paid out of the state treasury, although it does seek an award of attorneys' fees.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this claim pursuant to the Copyright Act, 17 U.S.C. section 101 et seq., 28 U.S.C. sections 1331 and 1338, and the Declaratory Judgment Act, 28 U.S.C. section 2201.

6. Plaintiffs are informed, believe, and thereon allege that Defendant has sufficient contact with this district generally and, in particular, with the events herein alleged, including but not limited to its promulgation over the Internet of the Oregon Revised Statutes in a form available to millions of Californians, so as to subject it to both personal jurisdiction in this Court and to make this Court a proper venue pursuant to 28 U.S.C. section 1391. Defendant also sells to California residents and ships to California. Defendant maintains an Internet E-Commerce website at securepay.oregon.gov which sells to residents of all states including California and Plaintiffs are informed, believe and thereon allege that the securepay.oregon.gov e-commerce server used by Defendant is physically located in San Jose, California. Venue is also proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California: defendant sent “take down” notices to and affecting parties residing in the Northern District of California, and residents of the Northern District of California are alleged to have infringed copyright.

FACTUAL ALLEGATIONS

2 7.On April 7, 2008, the State of Oregon Legislative Counsel Committee (hereafter
3 “Committee”) wrote a “take-down notice” to plaintiff Justia, Inc. asking it to remove all copies
4 of Oregon Revised Statutes from the Internet and claiming a copyright in (1) the arrangement and
5 subject-matter compilation of Oregon statutory law, (2) prefatory and explanatory notes, (3)
6 headlines and numbering for each statutory section, and (4) the tables, index and annotations of
7 those laws. A copy of the Committee’s letter is attached hereto as Exhibit A. [[link to document](#)
8 on scribd.]

9 8.On April 13, 2008, plaintiff Public.Resource.Org wrote the committee explaining that
10 (1) there is a right to read public law which precludes the state's assertion of copyright, and (2)
11 the state was asserting a copyright over non-copyrightable material. Carl Malamud, the president
12 and CEO, stated that Public.Resource.Org had posted, but had currently restricted, both 2005 and
13 2007 copies of the Oregon Revised Statutes. Mr. Malamud pointed out that section
14 173.763(1)(a)(H) of the Oregon Revised Statutes spelled out a mandate of making available a
15 number of items including bills, bill histories, and “all Oregon Laws enacted on and after
16 September 9, 1995.” A copy of his April 13 letter is attached as Exhibit B. [[link to document on](#)
17 [scribd](#)]

18 9.Mr. Malamud followed up his April 13 letter with an April 15 letter explaining to the
19 Committee that its own website “does not meet broadly accepted standards of functionality and
20 validity.” He pointed out that ORS section 173.763 mandates that the law “shall be made
21 available to the public through the largest nonproprietary, nonprofit cooperative public computer
22 network. The information shall be made available in one or more formats and by one or more
23 means in order to provide the general public in this state with the greatest feasible access.” A
24 copy of his April 15 letter is attached hereto as Exhibit C.

25 10. The Committee replied to the April 13 and April 15 letters by promulgating, on or
26 about April 29, a so-called "Public License" which would allow plaintiffs to post the Oregon
27 Revised Statutes on the Internet only if they acknowledged that portions of the Oregon Revised
28 Statutes "are protected by copyright and other applicable law to the extent stated in this license."

1 The “Public License” stated, “Any copying, reproduction, download or other use of the ORS
2 Website Edition as provided on this website other than as authorized under this License or under
3 copyright law is prohibited.” A copy of the “Public License” is attached hereto as Exhibit D. A
4 day later, the Committee wrote to Tim Stanley, the head of Justia, informing him that it would not
5 require him to remove content “at this time,” but it did not back down from or renounce its claim
6 of copyright over portions of the Oregon Revised Statutes (“ORS”), nor did the Committee rule
7 out future legal action to remove the ORS from Justia’s website. A copy of the state’s April 30
8 letter is attached hereto as Exhibit E.

9 11. Plaintiffs' counsel wrote to the Committee on May 2, 2008 informing the Committee
10 that plaintiffs had reached an impasse with the Committee, and that plaintiffs intended to post the
11 entirety of the Oregon Revised Statutes, including the material the Committee had asserted a
12 copyright over, on June 2, 2008. A copy of the May 2 letter is attached hereto as Exhibit F.

13 12. It is generally recognized that the Oregon Revised Statutes are the definitive statement
14 of Oregon law as enacted by the elected representatives of the citizens of Oregon. The Wikipedia
15 entry for “Oregon Revised Statutes” says it is the “codified body of statutory law governing the
16 U.S. state of Oregon, as enacted by the Oregon Legislative Assembly.” [Oregon Revised
17 Statutes, WikiPedia, http://en.wikipedia.org/wiki/Oregon_Revised_Statutes, last accessed May
18 13, 2008]. That the Oregon Revised Statutes is official is reinforced throughout the government.
19 (See, e.g., Oregon Department of Revenue which links to the Oregon Revised Statutes as
20 controlling law at <http://www.oregon.gov/DOR/adminrules.shtml>, last accessed May 13, 2008
21 and City of Medford, Oregon, which also links to the Oregon Revised Statutes at
22 <http://www.ci.medford.or.us/Page.asp?NavID=1484>, last accessed May 13, 2008.)

COUNT I: DECLARATORY RELIEF OF NON-INFRINGEMENT

24 13. Plaintiffs repeat and incorporate as though fully set forth herein each and every
25 allegations in paragraphs 1 through 12 above.

26 14. There is a real and actual controversy between plaintiffs and the State of Oregon
27 Legislative Counsel Committee regarding whether the Committee owns a copyright over portions
28 of the Oregon Revised Statutes (“ORS”).

1 15.The Committee contends that it owns a copyright on the arrangement and subject-
2 matter compilation of ORS, the prefatory and explanatory notes, the lead-lines and numbering for
3 sections, and tables, indexes and annotations.

4 16.Plasticiffs contend that the Committee's assertion of copyright is precluded by the First
5 Amendment to the United States Constitution, by Oregon law, by United States copyright law,
6 and by such authorities as *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S.
7 340 (1991) [alphabetical listings of names, accompanied by towns and telephone numbers, in
8 telephone book white pages held not copyrightable] and *Matthew Bender & Co. v. West
9 Publishing*, 158 F.3d 674, 676 (2d Cir. 1998) [alterations to judicial opinions, such as annotating
10 to reflect subsequent procedural developments and choices on selection and arrangement, "can
11 reasonably be viewed as obvious, typical, and lacking even minimal creativity"]. Plaintiffs also
12 contend that the Oregon Revised Statutes are in the public domain and that any use they are
13 making or propose to make of the ORS is a fair use pursuant to 17 U.S.C. section 107. Indeed,
14 the Committee itself in its April 7 letter (Exhibit A) conceded that the entirety of the Oregon
15 Revised Statutes is freely available online at the Oregon Legislative Assembly's own website.

16 17.Since the ORS is used by the executive branch, legislative branch, courts and lawyers
17 as a statement of the law (the Committee calls the printed version the "official legal text" on its
18 website, www.leg.state.or.us/ors), it has "enter[ed] the public domain and [is] not subject to the
19 copyright holder's exclusive prerogatives." *Veeck v. Southern Building Code Congress Intl., Inc.*,
20 293 F.3d 791, 793.

21 18.Plasticiffs therefore request that the Court determine and adjudge that each and every
22 one of the propositions stated in paragraphs 16 and 17 above states the law applicable to the facts
23 stated in this action, and that plaintiffs have a right to post the Oregon Revised Statutes including
24 the organizational scheme of the statutes, the numbers and leadlines, editorial notes, source notes
25 and prefatory material, the index, the annotations, tables, and other material as to which the
26 Committee claims copyright ownership.

27

28

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for relief as follows:

3 1. A declaratory judgment that the use they have made and propose to make of the
4 Oregon Revised Statutes is not an infringement of copyright;

5 2. Injunctive relief restraining Defendant, and its agents, servants, employees,
6 successors and assigns, and all those in privity with it, from bringing any lawsuit or threat against
7 plaintiffs for copyright infringement for their use of the Oregon Revised Statutes, including but
8 not limited to plaintiffs' publication, distribution, display, licensing, arrangement, or the ability to
9 host it online or link to it from any website;

10 3. Attorney's fees pursuant to, *inter alia*, 17 U.S.C. section 505, on a private attorney
11 general basis according to California Code of Civil Procedure section 1021.5, or otherwise as
12 allowed by law;

13 4. For plaintiffs' costs and disbursements; and

14 5. For such other and further relief as the court may deem just and proper.

15 || Dated: May 16, 2008

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9

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